

6,691,473

6,892,499

CUSTOM SEAL, INC.,

Plaintiff,

V.

ACME CONE COMPANY, LLC,

and

FLASHCO MANUFACTURING, INC.,

Defendants.

Case No. 3:11-cv-00537

Judge:

JURY DEMAND

Plaintiff Custom Seal, Inc., by and through its attorneys, Standley Law Group LLP, brings this action against Defendants Acme Cone Company, LLC and Flashco Manufacturing, Inc., and alleges and complains as follows:

1. This is an action for patent infringement under the United States Patent Law, 35 U.S.C. § 271 *et. seq.*

2. Plaintiff Custom Seal, Inc. (hereafter “Custom Seal”) is an Ohio corporation with its principal place of business at 708 Graham Drive, Fremont, Ohio 43420. Custom Seal is engaged in the business of manufacturing and selling membrane roofing systems.

3. Upon information and belief, defendant Acme Cone Company, LLC is an Oregon limited liability company with its principal place of business at 3237 W. 1st Ave., Eugene, Oregon 97402. Defendant Acme Cone Company, LLC (hereafter referred to as “Acme Cone”) is engaged in the same business as Custom Seal.
4. Upon information and belief, defendant Flashco Manufacturing, Inc. is a California corporation with its principal place of business at 1452 Industrial Ave, Sebastopol, California 95472. Defendant Flashco Manufacturing, Inc. (hereafter referred to as “Flashco”) is engaged in the business of manufacturing roof flashings and accessories, including membrane roofing systems. Acme Cone and Flashco are hereafter collectively referred to as the “Defendants.”

JURISDICTION AND VENUE

5. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 in that this Complaint states an action based upon a federal question relating to patents.
6. Upon information and belief, defendant Acme Cone has regularly engaged in business in the State of Ohio, is engaged in substantial and not isolated activity within the State of Ohio, has committed acts of infringement in the State of Ohio, and is subject to personal jurisdiction in Ohio.
7. A substantial part of the events giving rise to Plaintiff’s claim against Acme Cone have occurred within this district.
8. Upon information and belief, defendant Flashco has regularly engaged in business in the State of Ohio, is engaged in substantial and not isolated activity within the State of Ohio,

has committed acts of infringement in the State of Ohio, and is subject to personal jurisdiction in Ohio.

9. A substantial part of the events giving rise to Plaintiff's claim against Flashco have occurred within this district.
10. Custom Seal is suffering from the effects of Defendants' unlawful conduct in this district.
11. Venue is proper in this district and in this division under 28 U.S.C. §§ 1391 and 1400.

CLAIM FOR PATENT INFRINGEMENT

12. The allegations of paragraphs 1 – 11 are incorporated as if fully set forth herein.
13. Custom Seal is the owner of all right, title, and interest in and to United States Letters Patent No. 6,830,269 entitled "Apparatus and Method for Sealing a Vertical Protrusion on a Roof" (hereafter "the '269 Patent"), which duly, validly, and legally issued to Robert L. Mayle on December 14, 2004, and has since been assigned to Custom Seal. A copy of the '269 patent is attached hereto as Exhibit "A".
14. Custom Seal is the owner of all right, title, and interest in and to United States Letters Patent No. 6,691,473 entitled "Apparatus and Method for Sealing a Vertical Protrusion on a Roof" (hereafter "the '473 Patent"), which duly, validly, and legally issued to Steven R. Mayle and Robert L. Mayle on February 17, 2004, and has since been assigned to Custom Seal. A copy of the '473 patent is attached hereto as Exhibit "B".
15. Custom Seal is the owner of all right, title, and interest in and to United States Letters Patent No. 6,892,499 entitled "Apparatus and Method for Sealing a Vertical Protrusion on a Roof" (hereafter "the '499 Patent"), which duly, validly, and legally issued to Steven R. Mayle on May 17, 2005, and has since been assigned to Custom Seal. A copy of the '499 patent is attached hereto as Exhibit "C".

16. Defendant Acme Cone has been, and is now, infringing one or more claims of the '269

Patent in violation of 35 U.S.C. § 271 by:

- a. making, importing, using, offering to sell, and/or selling in this judicial district, and elsewhere in the United States, products which embody the invention claimed by the '269 Patent; and/or
- b. actively inducing others to infringe the '269 Patent; and/or
- c. contributing to the infringement of the '269 Patent.

17. Defendant Acme Cone's actions with respect to the '269 Patent are without authority or license from Custom Seal.

18. Defendant Acme Cone has been, and will continue making, importing, using, offering to sell, and/or selling products that infringe the '269 Patent without a license from Custom Seal.

19. Defendant Acme Cone's infringement has been with notice and knowledge of the '269, Patent, and has been willful and deliberate.

20. Defendant Flashco has been, and is now, infringing one or more claims of the '269, '473, and '499 Patents in violation of 35 U.S.C. § 271 by:

- a. making, importing, using, offering to sell, and/or selling in this judicial district, and elsewhere in the United States, products which embody the invention claimed by the '269, '473, and '499 Patents; and/or
- b. actively inducing others to infringe the '269, '473, and '499 Patents; and/or
- c. contributing to the infringement of the '269, '473, and '499 Patents.

21. Defendant Flashco's actions with respect to the '269, '473, and '499 Patents are without authority or license from Custom Seal.

22. Defendant Flashco has been, and will continue making, importing, using, offering to sell, and/or selling products that infringe the '269, '473, and '499 Patents without a license from Custom Seal.
23. Defendant Flashco's infringement has been with notice and knowledge of the '269, '473, and '499 Patents, and has been willful and deliberate.
24. Defendants' acts of infringement have caused damage to Custom Seal, and Custom Seal is entitled to recover from Defendants the damages sustained by Custom Seal as a result of Defendants' wrongful acts in an amount subject to proof at trial.
25. As a consequence of the infringement complained of herein, Custom Seal has been irreparably damaged to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless Defendants are enjoined by this Court from committing further acts of infringement

PRAYER FOR RELIEF

WHEREFORE, Custom Seal prays for entry of judgment that:

- A. Acme Cone has been and is infringing, contributing to the infringement of, and/or actively inducing infringement of the '269 Patent;
- B. Flashco has been and is infringing, contributing to the infringement of, and/or actively inducing infringement of the '269, '473, and '499 Patents;
- C. The infringement, contributory infringement, and/or active inducement of infringement by Defendants has been willful and deliberate;
- D. This is an "exceptional case" under 35 U.S.C. § 285;

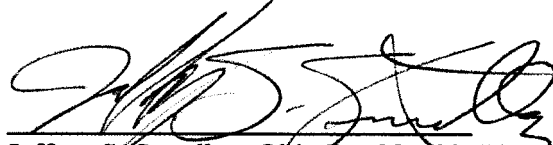
- E. That, pursuant to 35 U.S.C. § 283, Defendants, their officers, directors, agents, assigns, and employees, and all others acting in concert or participation with them or under their authority be preliminarily and permanently enjoined from making, using, offering to sell, and selling infringing products and from otherwise infringing, contributing to infringement, and actively inducing infringement of any of the '269, '473, and '499 Patents;
- F. An accounting of damages to Custom Seal arising from Defendants' acts of infringement, contributory infringement, and active inducement of infringement, said damages including lost profits, but in no event less than a reasonable royalty to be paid by Defendants as a result of Defendants' infringing activities;
- G. An award to Custom Seal of three times the actual damages and lost profits or royalties so determined by the accounting, together with interest and costs as provided for under 35 U.S.C. § 284;
- H. For the costs of this action together with Custom Seal's attorneys' fees under 35 U.S.C. § 285, and
- I. Such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Custom Seal demands a trial by jury of all issues triable by a jury in this case as a matter of right.

Dated: March 15, 2011

Respectfully submitted,



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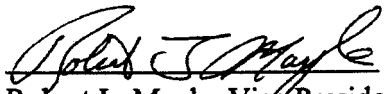
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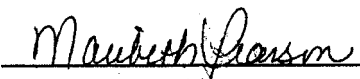
VERIFICATION

The undersigned, Robert L. Mayle, being duly sworn according to law, deposes and says that he is the Vice President of Custom Seal, Inc., that he has read the foregoing Complaint, knows the contents of the factual allegation paragraphs and that said paragraphs are true to the best of his knowledge, except as to matters stated therein to be alleged on information and belief, and as to those matters, he is informed and believes that they are true.

Dated this 11 day of March, 2011.


Robert L. Mayle, Vice President
Custom Seal, Inc.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 11 DAY OF
MARCH, 2011.


Notary Public of the State of Ohio

My commission expires:

Maribeth Pearson Notary Public
In and for the State of Ohio
My Commission Expires 3/3/13